

**CONSERVATION COMMISSION/INLAND WETLANDS &
WATERCOURSES AGENCY MINUTES
SEPTEMBER 16, 2014
REGULAR MEETING**

I. CALL TO ORDER

Chairman Rich Miller called the Regular Meeting of the Conservation Commission to order at 7:35 p.m. in the Main Meeting Room at the Town Offices. Other members and alternates in attendance were Jim Morrison, Patrick Kottas, Darren Cunningham, Marjorie Winters, Margaret Sexton, and Donald Rieger. Also present were Michael Glidden, Code Compliance Officer; Rachel Blatt, Assistant Town Planner; Janis Prifti, Commission Clerk; and other interested parties.

II. APPOINTMENT OF ALTERNATES

Chairman Miller appointed Commissioner Kottas for Bert Kaplan and Commissioner Morrison to serve as an alternate for the Commission vacancy.

III. PUBLIC HEARING(s)

- a. Application #14-26 of K & K Developers Inc., Agent; Mark Greenberg, INFINITY IV, LLC, Owner, for the regulated activities associated with the Zoning Application for a PAD on the property located at 34 Hopmeadow Street (Map E18, Block 117, Lot 001). Zone I-1.

Town Staff explained that K & K would appear at the 10/7/2014 Commission meeting due to a Staff delay in publishing the public notice.

IV. DISCUSSION AND POSSIBLE ACTION

- a. Application #14-24 of Roger and Lisa Putnam, Owners, for the placement of a pre-built shed and standby generator in the Upland Review Area to a wetland on the property located at 8 The Glade (Map C05, Block 203, Lot 025). Zone R-80OS.
(continued from 9/2/2014)

Application #14-24 was read into the record.

The Applicant apologized for not submitting an application for Commission approval. The home was purchased last year with significant work to be performed by the seller to complete the sale. The Applicant believed all Commission approvals were obtained by the seller, but when the contractor was installing a shed on the property on crushed stone in an Upland Review Area, it was discovered that a shed and pad had not been submitted for Commission approval and all work was stopped. The Applicant showed the Commissioners photos of the property, slope down to the

wetlands, and shed location with pad extended to accommodate a generator with only electricity remaining to be installed. Town Staff confirmed that disturbance occurred and any outstanding concerns, such as additional stabilization, could be addressed with this permit. The propane fuel line runs about 8 feet underneath the patio from the tank on the other side of the house.

Commissioner Rieger made a motion that the Commission find that this is a regulated activity as it involved placement of material and construction within the Upland Review Area.

Commissioner Cunningham seconded the motion, and it was passed unanimously.

Commissioner Rieger made a motion the Commission find it is not a significant activity involving no evident damage or danger to wetlands or watercourses.

Commissioner Cunningham seconded the motion, and it was passed unanimously.

Commissioner Rieger made a motion that the Commission grant the Application subject only to Staff's satisfaction that circumstances on the ground at this point are such that no further need is seen for erosion and sedimentation protections.

Commissioner Cunningham seconded the motion, and it was passed unanimously.

- b. Application #14-27 of Angela Parent, Owner, for the reconstruction of an existing headwall for driveway culvert in the wetland on the property located at 372 Bushy Hill Road (Map C17, Block 404, Lot 031-B). Zone R-40.

Application #14-27 was read into the record.

The Applicant explained that the culvert has eroded from driveway water and needs repair. The Stone Man in Canton would be the contractor and filed the papers with the Town and the 2 days of work would be scheduled before winter. Town Staff indicated the plan was to use a mini excavator to pick up debris with limited disturbance in the drainage swale as the contractor repairs the stonewall. Because it is an active drainage swale, Town Staff recommended the work be done in a dry time. Photos were provided to the Commissioners. Town Staff explained that sand and timbers have fallen into the swale and the scope of work does not state if stone will be put down, or wet seed mix, and the Commission could state that as an approval condition. As the area takes quite a bit of drainage from the State road, Town Staff recommended putting down erosion matting and vegetation to stabilize the side slopes for the long term. If the work is done by 10/15/2014, grass could grow, but after that it would be weather dependent. Putting down seed and erosion matting now would get the Applicant through the winter; long-term the area would have to be seeded and re-stabilized in the Spring.

Commissioner Sexton made a motion that this is a regulated activity because it affects an intermittent watercourse.

Commissioner Kottas seconded the motion, and it was passed unanimously.

Commissioner Sexton made a motion that it is not a significant activity since this is an intermittent water course and steps will be taken to minimize any impact on the water course itself and they try to construct in a dry period.

Commissioner Kottas seconded the motion, and it was passed unanimously.

Commissioner Sexton made a motion the permit be granted pending approval of Staff to work with the stone man and get some more details and include recommendation by the Commission in terms of stabilizing soil in the area, especially next Spring with Staff's providing further input and approval.

Commissioner Kottas seconded the motion, and it was passed unanimously.

- c. Application #14-28 of Richard J. Higley, Sr., Agent; Dyno Nobel, Inc., Owner; for the installation of a concrete slab for a generator in the Upland Review Area to a wetland on the property located at 660 Hopmeadow Street (Map G11, Block 132, Lot 052). Zone I-2.

Application #14-28 was read into the record.

The Applicant advised they are removing an older diesel generator from their boiler room and a 250-gallon diesel tank outdoors; they have been working to remove all above and below-ground tanks as they transition to natural gas or propane; every time a tank is removed, they test the area.

This Application is to install a concrete slab in the Upland Review Area for a generator. Regarding stockpiling, rip rap exists against the bank and they would go in this tight area with a bobcat and mini excavator; the 12 foot wide x 6 foot long x 3-foot thick slab would be excavated mostly above the 162 flood grade; dirt would be removed and the pad would be buggied in. They would place hay bales against the bank in the work area and seed their way out putting erosion control matting down. The work would take 4-5 days with about 2 yards of soil excavated and moved to the properties dump area. They have about a month window to perform this work.

A parking lot located within 30 feet of the project would be used as a staging area; the work would be performed at dry time above the water table; and the material would be damp, but not wet; about 7 yards of concrete would be brought in in 5-7 trips; there are steam and power line obstructions and they would stay within 8 feet of the building and about 10 feet from the brook. They confirmed the rip rap remains in place on the bank and they will be working in a flat area; the vegetated 8x50-foot rolled mat would go down when they exit.

Town Staff advised there is a large area of disturbance coming from the pavement to the job site and recommended the Applicant provide erosion and sedimentation control. The Applicant would put hay bales between the silt fence and the brook. If the disturbance expanded beyond the

pad area and closer to the bank, then additional native stabilization plantings should be required.

Commissioner Kottas made a motion that this is a regulated activity since it is in the Upland Review Area.

Commissioner Cunningham seconded the motion, and it was passed unanimously.

Commissioner Kottas made a motion that it is not a significant activity because of the description from the Applicants for the way this will be performed and also further discussion with Town Staff on erosion and sedimentation control.

Commissioner Cunningham seconded the motion, and it was passed unanimously.

Commissioner Kottas made a motion to accept this permit contingent upon this plan for erosion and sedimentation control that will be discussed with Town Staff; contingent upon it being done in the appropriate time of year, such as in the current dry weather; and keeping in mind the discussion on short and long-term stabilization of that area.

Commissioner Cunningham seconded the motion, and it was passed unanimously.

- d. Application #14-29 of Jeff Bodmer, Owner, for the Placement of a shed within the Upland Review Area to a wetland on the property located at 39 Westledge Road (Map B09, Block 419, Lot 006C). Zone R-40.

Application #14-29 was read into the record.

The Applicant indicated because the property has about 35-40 feet of slope from the southwest corner to the northeast corner, this is the only level area on his property where a shed could go; crushed stone would be used for the pad. The property slopes down to a wetland and Hopbrook. The shed would be located in wooded property at the property edge; from that point to the wetland, it slopes about 1-2 feet of slope for every 10 feet to the brook and would be about 65-70 feet from the brook.

Commissioner Cunningham made a motion that this is a regulated activity since it falls within the Upland Review Area.

Commissioner Kottas seconded the motion, and it was passed unanimously.

Commissioner Cunningham made a motion that it is not a significant activity because there will be very little disturbance to the area, and as described the Applicant; the likelihood of any further disturbance to the wetland has been minimized.

Commissioner Winters seconded the motion, and it was passed unanimously.

Commissioner Cunningham made a motion to grant the permit subject to any final conditions that Staff shall impose upon a final review of the project.

Commissioner Rieger seconded the motion, and it was passed unanimously.

- e. Application #14-30 of Sandeep Mehta, Owner, for the placement of a shed within the Upland Review Area to a wetland on the property located at 42 Banks Road (Map E12, Block 127, Lot 023). Zone R-40OS.

Application #14-30 was read into the record.

The Applicant requested approval to put a 10 x 12-foot shed in their grassy back yard about 15 feet upland from the wetland area; a crushed stone pad would be used for the base. The existing topography would not be disturbed and the Commissioners were shown photos of the location. The grass in the shed area would be stripped, ground leveled, and crushed stone put in place.

Commissioner Winters made a motion that this is a regulated activity as it is a disturbance within the Upland Review Area of a wetland.

Commissioner Cunningham seconded the motion, and it was passed unanimously.

Commissioner Winters made a motion that it is not a significant disturbance as it requires minimal disturbance in the area and no disturbance to the wetland whatsoever and the flat area has no need for sediment control.

Commissioner Cunningham seconded the motion, and it was passed unanimously.

Commissioner Winters made a motion to approve the permit for construction of the shed in this area.

Commissioner Cunningham seconded the motion, and it was passed unanimously.

- f. Application #14-31 of John Ficaro, Owner, for the construction of an addition in the Upland Review Area to a wetland on the property located at 5 Hamilton Lane (Map F17, Block 201, Lot 012). Zone

Application #14-31 was read into the record.

The Applicant's builder reviewed that a 16 x 22-foot kitchen addition is proposed for the back of the home with a full foundation and minimal disturbance. They are within the wetland setback and the backyard up to the wetlands is grass; excavated material would be removed from the site, except for several yards of topsoil retained for planting around the proposed addition at project completion. The house is about 2 feet within the 100-foot Upland Review Area. Regarding foundation work, it would be about 6 1/2 feet below grade to the bottom of the footing. They

would like to begin work the next day: 1) excavation, foundation and backfill work would take about 1 to 1 1/2 weeks; 2) framing and roofing the addition about 1 1/2 weeks; 3) the remaining exterior work about 1-2 weeks; 4) totaling a 5-6 week project. In about 5 weeks, a winter rye seed mix would be put down as soon as the pre-stained siding is completed. Cats Tongue Brook was described as an intermittent waterway that is currently dry; the woods are clean with leaf cover and grass planted up to house edge. Spreading top soil would take place in about a week with about 1 foot of backfilled silt fence around the small topsoil stockpile. Access would be through the driveway, which is a short, direct route to the back grass; the leach field is on the opposite side of the house; and the yard is very flat.

Commissioner Morrison made a motion that this is a regulated activity because it occurs within the Upland Review Area.

Commissioner Kottas seconded the motion, and it was passed unanimously.

Commissioner Morrison made a motion that this is not a significant activity because it appears there will be minimal if any damage to wetlands.

Commissioner Sexton seconded the motion, and it was passed unanimously.

Commissioner Morrison made a motion to approve the Application with the conditions for silt fencing around any stockpiles, seeding and restabilization 5 to 6 weeks into the project, and that the Applicant re-seed and stabilize any disturbed areas.

Commissioner Sexton seconded the motion, and it was passed unanimously.

- g. Application #14-32 of Pauline Salter, 121 West Street, LLC, Owner, for the installation of a curtain drain system in the Upland Review Area to a wetland on the property located at 121 West Street (Map F11, Block 103, Lot 015A). Zone I-2.

Application #14-32 was read into the record.

In response to the Commission's suggestion to the Applicant at the 5/20/2014 meeting, the Applicant split the project into phases with groundwater sampling performed. They would like approval to continue with Phase 2 of this large storm water drainage project to put in a curtain drain and a drain around the property to help with hydraulics. The first phase is almost complete with the hydrodynamic separator installed today; sediment control is in place with drainage water going through the separator; erosion control with hay bales and silt fence is around the property.

The location of the monitoring wells and curtain drain were shown to the Commissioners on a larger map. Because of concerns regarding offsite petroleum contamination, test monitoring wells were put in place. Water is 4-6 feet below grade. They believe the original curtain drain is plugged as water seeps out and they want to fix it so they can pave the area next Spring. Petroleum contaminants found in the soil were discussed and were believed to be historic in the

soil, where they tend to stay, with highest concentrations along the property boundary continuing to decrease over time. Inadvertent conveyance of the contaminants through drainage elsewhere was not evidenced by their groundwater testing. As the groundwater table rises/falls, historic petroleum is trapped between, but a fresh oil spill would visibly migrate. With the high water table situation in this GA area, the criteria for ETPH would be 500 mg. per kg. with excavation in this area requiring the soil to be removed. The pollutant mobility criteria (PMC) was explained to be a measure in soil that the State DEEP uses to determine how much of a contaminant can exist in soil so that it does not negatively impact groundwater; they believed the groundwater results should be used to provide the proof.

The Commissioners discussed that the PMC number reveals whether there could be a problem with groundwater; the State set the PMC numbers lower than the concentrations here, indicating there could be a problem. The Commissioners noted that the water table was below where the soil samples were collected and the Applicant has indicated when there is substantial rain, they see water at the surface because of the clay soil. The Commissioners continuing concern was if oil on the property is bound up in soil, what is the risk it will be re-mobilized when the water table rises and what does that do to the groundwater; they do not have any data and the numbers for this property are above the State threshold for leaching these contaminants into groundwater. The Applicant's representative responded the monitoring wells were about 10 feet deep providing samples through the year. Based on the results, the Applicant believed the oil product was present a long time, subject to precipitation for years and has leached into the groundwater; and absent a new spill, they do not see runoff into groundwater. As of July 2013, the State changed it so that if you can show a site, such as this, is subject to rainwater for at least 5 years and the groundwater is clean, the PMC does not apply. Rigorous State remediation standard regulations were said to apply to specific situations, e.g. a site cleanup. There has been no site cleanup on this property. The wells remain in place and further samples could be taken, including in the Spring when the water table is higher. If a plume were found on a property, at least 2 seasonably variable rounds of groundwater sampling would be required by the State.

Regarding an alternate explanation for the presence of ETPH, the Applicant found it suspicious that it was only found along the property line. The focus here was on ground water and determining whether there were any issues of oil in the ground water and was it mobile - would putting in a drainage system allow a contaminated plume to spread around the property, and they did not find that. The Applicant believed the level of PMC on this site is not affecting groundwater. The Commissioners noted that in the boring log for the location with the high ETPH number, the PID reading was very high at 0-2 feet and a little lower at 2-4 feet, which did not appear to be something coming onto the property from an adjacent property, but rather something spilled on the surface that infiltrated down. The Applicant responded that PID is a screening tool to pick up VOCs and it depends on how high the water table is; PID readings provide a qualitative evaluation and the lab results provide a quantitative evaluation with wells put in areas where they think there may be contamination, and here the samples indicated the ground water is clean. They confirmed that the 2 wells on the west side of the property were bored through asphalt with a 3rd well in the dirt parking lot.

Regarding whether the infiltration arguments hold when the wells are under pavement, the Applicant's representative responded that concentrations in ground water remain over a period of time; the issue was whether the contaminated soil on this site has affected ground water, and they did not find that in the test results to date. Regarding how long there has been asphalt in the area, the Applicant believed about 15 years; part of the rear parking lot has asphalt and underground tanks; soil tests in the area detected nothing. This property has wet soil caused by runoff in the Spring from surrounding properties. The Applicant remembered the driveway as having always been paved to the fuel tanks, and beyond that, the backyard has been a gravel/dirt parking lot. The Commissioners commented they had hoped to hear the PID readings represented a small-localized problem, but coming from the neighbor's property, there is concern about how much it is and whether there is something significant to worry about. The Applicant's representative responded that there is nothing in the wells and the soil borings for NW3, B4, B5, B6, B7 and B8 do not have those issues; B5 has 280 mg./kg. and the rest were non-detect. The curtain drain would be in the center of the property where there are no issues.

The Applicant believed the preponderance of evidence for the wells placed down-gradient and soil samples taken on the property indicated no petroleum issue with soil, and the water was clean; groundwater flow was confirmed toward the outfall; the scope of the investigation was not to confirm the degree and extent of contamination, but to learn what the groundwater issues were, depth to water, and whether there were migrating pollutants based on installation of the curtain drain system.

Regarding reporting requirements for ETPH, the State requires reporting exceedingly high levels, but that does not apply for this site. While the buses are parked away from the property line area, there could be historical contaminants from any spill. The Commissioners noted an open question remains about oil moving onto the property, staying in the soil, and that it remains unknown what will happen when the water table rises; samples collected at 0-2 feet may not be comprehensive enough; more likely sources could be buses parked onsite and historic operations having caused a significant impact.

The Applicant confirmed asphalt paving would not be done until the Spring with all storm water routed to the drains and east to the outfall with rip rap. The Commissioners noted this area is not particularly sensitive. However, the Applicant indicated they must meet the State spill proof prevention plan to deal with any spills on the property and anything that shows up in the outfall or booms must be dealt with right away. Periodic outfall monitoring and testing is performed and the storm drains would have filters and booms to gather any oil, with the separator the ultimate stop point; anything beyond that requires placement of booms and hay bales.

Regarding the monitoring wells, they serve a useful tool but over time are driven over and provide a direct conduit for any spill and should be removed as soon as they are no longer needed. The curtain drain falls at the outfall where monitoring will continue; the first monitoring of that area came back non-detect; the worst tests usually follow the first rain after asphalt paving. Because of a right of way easement, the Applicant is also responsible for his neighbor's business traffic effects on the property.

It was clarified that at this meeting, the Commission is voting on the 2nd phase of this project. The Commissioners felt the monitoring wells should be abandoned under best practices.

Commissioner Sexton made a motion that this is a regulated activity because it is in an Upland Review Area.

Commissioner Rieger seconded the motion, and it was passed unanimously.

Commissioner Sexton made a motion that it is not a significant activity in that it will not have a direct impact on the wetlands in that the construction of the curtain drain will be managed in such a way to prevent erosion or siltation into the adjacent wetland area.

Commissioner Rieger seconded the motion, and it was passed unanimously.

Commissioner Sexton made a motion to grant the permit based on the existing information the Commission has been given, that the construction is monitored by Staff counsel, that any recommendations to minimize impact to the wetlands is addressed by Staff counsel, and the Commission requests that the monitoring wells be abandoned, as they are no longer needed.

Commissioner Kottas seconded the motion, and it was passed unanimously.

V. RECEIPT OF NEW APPLICATIONS

None.

Two members of Town Staff confirmed they are becoming certified in a time period over the next 2-3 meetings.

CORRESPONDENCE/ANNOUNCEMENTS

Town Staff provided the announcement for the CACTWC meeting and invited the Commissioners to advise Staff if they wished to attend.

- a. Referral from the Planning Commission for the 2-lot re-subdivision of the property located at 5 Pinnacle Mountain Road (Map H11, Block 106, Lot 001).

Town Staff provided the Commissioners with information to review for this proposed re-subdivision. The Commissioners discussed the location near Terry's Plain with Land Trust property to the south. It was noted there are wetlands on the far side of Terry's Plain. The referral would be for both conservation and inland/wetlands. The Commissioners noted that jurisdiction could be asserted based on concern that if the slope were dug up, it could wash down and impact the river, but did not believe they would do so here. Areas that could not be considered developable were noted. Town Staff reviewed that the principle building has to be in the buildable square, but does not have to be a rectangle, and the location of the

proposed house and leach field were identified. A slope analysis was also provided to the Commissioners and drainage was discussed. The Commission reviewed their concerns would focus on issues regarding the site, slope, and proximity to a water course.

A Public Hearing would be held at the Commission's 10/7/2014 meeting in advance of Planning Commission meeting on 10/14/2014. Comments provided by the Commission included, based on the mapping, the Commission sees no evidence of wetlands or water courses and no apparent need for consideration of inland/wetlands matters, and would any additional runoff disrupt the carefully planned drainage for that road. Staff noted roof collection at 3 different points with infiltration was proposed. Staff was invited to add pertinent comments and will draft a summary of this discussion for review by the Commissioners prior to providing it to the Planning Commission. The Public Hearing for this referral will remain on the next meeting Agenda for further discussion of erosion and infiltration.

Town Staff reviewed there was a request to the Commission for a Special Meeting on 9/30/2014 at 7:30 p.m. at this location for the Pinnacle/Hopmeadow Project due to the public notice issue; the meeting would be for both a referral and permit for regulated activities with more engineering information having been requested. It was noted that Applicant provided information on invasives and which be provided to the Commissioners prior to the meeting. A meeting notice reminder will be sent to the Commissioners.

Town Staff indicated the Applicant should be present when the referral is voted on and, in the meantime, a draft will be prepared and, at the meeting, the invasives portion will be added.

There are 2 holdover applications for the next regularly scheduled meeting for Park and Rec driveway paving.

It was noted that Bert Kaplan is no longer a Commission member and a new member may be present at the next meeting.

The Commissioners noted that Rivers Alliance and related organizations are drafting a letter to the EPA and Corps of Engineers regarding the scope of the Clean Water Act. The goal would be to improve the somewhat unsettled state of the law and it would be beneficial if those agencies modified the regulation somewhat to clarify the scope of the Act and the Commission is invited to express its view. Staff could send that information around for further Commission discussion. The Commissioners agreed to express their views on this law.

VI. APPROVAL OF MINUTES of September 2, 2014; July 15, 2014; November 19, 2013; October 15, 2013

October 15, 2013 Minutes:

Commissioner Cunningham made a motion to approve the October 15, 2013 minutes, as written.

Commissioner Winters seconded the motion, and it was passed with Commissioners Morrison, Kottas and Rieger abstaining.

November 19, 2013:

Commissioner Rieger made a motion to approve the November 19, 2013 minutes, as written.

Commissioner Sexton seconded the motion, and it was passed with Commissioners Morrison and Cunningham abstaining.

July 15, 2014:

On Line 296, the word "Mike" is deleted.

Commissioner Rieger made a motion to approve the July 15, 2014 minutes, as amended.

Commissioner Kottas seconded the motion, and it was passed with Commissioners Sexton and Winters abstaining.

September 2, 2014:

On Line 11, the spelling of the name "Marjorie" is corrected to "Margery".

On Line 90, the word "view" is inserted following the word "of".

On Line 91, the words "are encourage" are corrected to "it encourages".

Commissioner Rieger made a motion to approve the September 2, 2014 minutes, as amended.

Commissioner Winters seconded the motion, and it was passed unanimously.

VII. ADJOURNMENT

Commissioner Rieger made a motion to adjourn the meeting at 10:03 p.m.

Commissioner Winters seconded the motion, and it was passed unanimously.

Donald Rieger, Secretary